

To: **Amherst Select Board**

From: **Amherst Conservation Commission, Amherst Conservation Department**

Date: **July 16, 2010**

Re: **Norwottuck Rail Trail Expanded Environmental Notification Form (EENF)**

Introduction

The Expanded Environmental Notification Form (EENF) for the Department of Conservation and Recreation's (DCR) Norwottuck Rail Trail (NWRT) project is currently under review by the Massachusetts Environmental Policy Act (MEPA) office. The project will have major environmental impacts in Amherst and proposed changes will significantly change the character, aesthetics, and ecosystem of the Lawrence Swamp area of the trail near Station Road. The majority of project impacts in Amherst occur within sensitive areas that include important wetland resources, habitat for state-listed rare species, and protection for public drinking water sources.

DCR is seeking a waiver from the normal MEPA review process and permission for an expedited review. The Amherst Conservation Commission and staff have serious concerns about the project and do not believe that DCR's request for a MEPA waiver has been adequately justified. This memorandum provides a brief overview of the MEPA process, a description of the proposed project and summary of impacts, and notes some of our major concerns about the project.

Comments on the EENF are due to the MEPA office in writing by 5 pm on Friday, July 23, 2010. The Conservation Commission and Conservation Department will be providing detailed comments to the Secretary, indicating that we do not believe the waiver request has merit, and requesting additional information about many aspects of the project. A similar letter from the Select Board will help to demonstrate to MEPA that the Town has serious and unresolved concerns about the project.

Overview of MEPA Process

The Massachusetts Environmental Policy Act (MEPA) is a Massachusetts General Law administered by the Secretary of Energy and Environmental Affairs (EEA). MEPA provides for coordinated local, state, and federal agency and public review of projects that require a state agency action (i.e. permit or financial assistance) and that exceed one or more MEPA review thresholds. MEPA review thresholds are established for a variety of environmental impacts, including wetlands, land alteration, traffic, etc. There are two levels of review thresholds. Smaller projects require the preparation of an Environmental Notification Form (ENF). Larger projects require an ENF and also the preparation of a Draft and Final Environmental Impact Report (EIR). For example, a project that creates greater than 5 acres of new impervious surface requires an ENF, while a project that creates greater than 10 acres of new impervious surface requires an EIR.

For projects subject to MEPA review, no state permits can be issued until the MEPA process is complete. The MEPA process ends when the Secretary issues a Certificate on an ENF stating that no further MEPA review is required, or a Certificate on an EIR stating that the EIR is adequate.

The NWRT project exceeds numerous EIR thresholds as noted below. DCR has submitted an Expanded ENF (EENF) with a request that the Secretary waive the requirement for the EIR. Essentially, DCR is trying to make the case that the EENF has already provided an "EIR level of detail" about the project. The Secretary can grant a full EIR waiver if an applicant demonstrates that preparation of the EIR will result in an undue burden, and that going through the EIR process will not help to minimize or avoid environmental impacts associated with the project. To justify the waiver, the EENF should include a comprehensive alternatives analysis, demonstration that the project can meet the performance standards for all required state permits, and evidence that the applicant has done everything practicable to avoid, minimize and mitigate adverse impacts.

Project Overview

The NWRT runs from Northampton, through Hadley, Amherst, and ends in Belchertown. The major components of the NWRT project include:

- Resurfacing of the path and widening from 8 feet to 10 feet. This work will require grading and fill in the shoulder and adjacent wetlands and tree removal.
- Embankment stabilization along the path in the Lawrence Swamp area to minimize maintenance issues associated with beaver. This portion of the project will involve removal of vegetation on both sides of the path for 2,300 linear feet and installation of a concrete spillway with an articulating concrete "blanket" to prevent burrowing by beaver and muskrat. This new structure will be regulated as a dam by the Office of Dam Safety.
- Installation of a variety of amenities, including turn-around and catch-up areas, benches, and overlook spots
- Removal of a significant number of hazard trees, and measures to treat and prevent root damage to the trail
- Bridge, parking lot, and culvert improvements

The project will result in the following environmental impacts:

- 23 acres of land alteration
- 120,443 sf of impacts to Bordering Vegetated Wetlands
- 102,863 sf of impacts to Bordering Land Subject to Flooding
- 82,460 sf of impacts to other wetlands including Bank, Isolated Wetlands, Riverfront, and Land Under Water

The wetland impacts associated with the project are so large, that the project cannot meet the performance standards outlined in the Massachusetts Wetlands Protection Act (WPA). DCR is therefore seeking a WPA Variance from the Commissioner of the Department of Environmental Protection. This actually takes a portion of the project out of the jurisdiction of the Amherst Conservation Commission.

A large portion of the project site and impacts occur within Estimated and Priority Habitat of state-listed rare species protected pursuant to the Massachusetts Endangered Species Act.

The Applicant on the EENF is the DCR. The project is being funded through state and federal transportation funds. DCR is managing the design and MassDOT will complete the construction.

Amherst Conservation Commission/Department Concerns

- **Waiver Request:** In addition to specific issues noted below, the Commission and Department do not believe that the EENF contains a sufficient level of information about project alternatives, impacts, and mitigation to warrant the EIR. Too many details are left to be determined, or to be resolved during permitting. The EENF does not meet the criteria for a full EIR waiver as outlined in the MEPA regulations. We understand that the trail is suffering from serious maintenance issues that need to be addressed, however these issues do not justify expediting environmental review when the impacts of the proposed activities are so significant.

In addition, the MEPA EIR process provides a valuable opportunity for public comment that is essential to a project of this magnitude. In the EIR, DCR would be required to specifically address comments submitted on the EENF.

- **Project Need/Justification:** DCR has not adequately justified the need for widening the trail. The trail widening results in significant environmental impacts that could be minimized through a more comprehensive evaluation of alternatives and thoughtful design. DCR's claim that the rail trail is congested and experiences frequent user conflicts is not supported by data or our own observations. DCR also states that the proposed width is required by state and federal transportation guidelines, however there are exceptions allowed in the guidelines for unusual circumstances. We would argue that areas where the rail trail has significant wetland resources and rare species on either side constitutes an exceptional circumstance. DCR should examine a trail of varying width that maintains the existing 8-foot width in sensitive areas.
- **New Concrete Spillway System:** The purpose of this portion of the project is to reduce maintenance issues caused by burrowing of beaver and muskrat in the Lawrence Swamp area of the trail north of the Station Road parking lot. DCR proposes to construct a concrete spillway with a water level control device to replace the existing beaver dam and to install a "slope blanket" on either side of the bike path consisting of an articulating concrete and cable mattress to prevent burrowing. The concrete revetment structure is proposed for 2,300 lf of the bike path and will require removal of vegetation on both sides of the path. The work associated with portion of the project will result in significant wetland impacts. Equally as important, this proposal will drastically change the natural ecology, aesthetics, and user experience in this portion of the trail. We believe that this solution is over-engineered, too large, and not warranted based on maintenance costs associated with the beavers and the fact that the existing beaver management system in place functions effectively.
- **Tree Removal:** The project will result in the removal of 95 trees along the bike path, and additional tree removal associated with turnarounds, catch up areas, bridge and culvert repairs, accessible connections, and alignment shifts. The embankment project outlined above will require the removal of all vegetation, including an estimated 56 trees, in this area of the path. The tree removal will change the user experience by loss of shade and greenery, and also have impacts to wetlands functions and wildlife habitat due to loss of tree cover.
- **Scale of Impacts, Lack of Detail about Mitigation:** As outlined above, the impacts of the project to state and federally-protected wetland resources are significant. Permanent impacts to Bordering Vegetated Wetlands require that the Applicant create wetland replication at a ratio of at least 1:1. Federal Army Corps regulations, to which this project is also subject, often require replication at a much higher ratio. The EENF

does not contain any detail about wetlands replication, and states that DCR is in the process of evaluating options for mitigation. We question whether DCR will be able to meet this performance standard and provide the required wetlands mitigation. Due to the scale and scope of the project, and the fact that the Applicant is seeking a full waiver from MEPA and a variance under the Wetlands Protection Act (WPA), the lack of detail about wetlands mitigation in the EENF is troubling.

- **Project Phasing:** We are aware that project stakeholders, including DCR's NWRT Advisory Committee have recommended that the project be phased in permitting and construction. This would allow for necessary project improvements to be implemented for portions of the trail not located within sensitive environmental areas, while the necessary regulatory details about the remainder of the project are resolved. We understand that this would require a shift in the project's permitting and construction schedule and strategy, however in the long run, this approach would likely result in time and cost savings.

We will copy the Select Board on our comments to the MEPA office, which will outline in more detail our specific project concerns and questions related to impacts and compliance with applicable regulations. We encourage the Select Board to submit comments on the project. Comments are due by 5 pm on Friday, July 23, 2010 and can be submitted via email. Comments should be addressed to:

Secretary Ian A. Bowles
Attn. MEPA Office
EEA # 14614
100 Cambridge Street, 9th Floor
Boston, MA 01085
Email: purvi.patel@state.ma.us

We also suggest that the following parties be copied on the comment letter:

Richard Sullivan, Commissioner, Department of Conservation and Recreation
Laurie Burt, Commissioner, Department of Environmental Protection
Stan Rosenberg
Ellen Story

We look forward to meeting with the Select Board on July 19th. Thank you.